

***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1 and 4-9 are pending in the application, with claims 1 and 7 being the independent claims. Claim 2 is cancelled without prejudice to or disclaimer of the subject matter therein. Claim 3 was previously cancelled. Claims 1 and 7 are sought to be amended. Support for these amendments can be found throughout the originally filed specification, including at page 5, line 31 through page 6, line 14 and in the Examples (*e.g.*, Samples B, E, H, I, J, K, L and M). New claims 8 and 9 are sought to be added. Support for new claims 8 and 9 can be found throughout the specification, including at page 5, line 31 through page 6, line 14, in the Examples (*e.g.*, Samples B, E, H, I, J, K, L and M) and in the claims as filed. These changes are believed to introduce no new matter, and their entry is respectfully requested.

A request for continued examination (RCE) under 37 C.F.R. § 1.114 is being submitted concurrently herewith. Therefore the finality of the Office Action dated July 8, 2010 is requested to be withdrawn and the amendments presented above are requested to be entered and considered.

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

***Rejections under 35 U.S.C. § 103***

Claims 1, 2 and 4-7 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Demeyere *et al.*, US Patent Application No. 2002/0035053 A1 ("Demeyere"). Applicants traverse this rejection as it applies to the currently pending claims.

Claim 2 has been cancelled rendering moot the rejection of claim 2. With regard to claims 1 and 4-7, Applicants submit the following remarks.

The Examiner alleges that claims 1, 2 and 4-7 are obvious in view of Demeyere *et al.* because the claimed ranges of ethoxylation equivalents of the nonionic material and the prior art ranges "are close enough that one skilled in the art would have expected them to have the same properties." Office Action at page 2. The Examiner further alleges that:

[i]n the present case, the degree of ethoxylation is commonly manipulated to affect the hydrophilic-lipophilic balance (HLB) of the surfactant. The examiner takes the position that the HLB values of a tetra-ethoxylate ["four equivalents of ethoxylation"] and a penta-ethoxylate ["five equivalents of ethoxylation"] would be similar enough that the person of ordinary skill would expect similar properties. In addition, such ethoxylated surfactants are statistical mixtures, and a tetra-ethoxylate ["four equivalents of ethoxylation"] would contain appreciable amounts of penta-ethoxylate ["five equivalents of ethoxylation"], and vice versa.

*Id.*

The Examiner has failed to establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness: (1) the references must teach or suggest all of the claim limitations, (2) there must be some reason, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the references, and (3) there must be a reasonable expectation of success. See M.P.E.P. § 2143 and cases cited therein. The Examiner has the burden of establishing a *prima facie* case of obviousness.

As amended, claim 1 recites "a fabric conditioning composition in the form of an aqueous dispersion comprising . . . a nonionic material represented by formula (I) . . . wherein . . . n is 2 or 3." Amended claim 7 recites "a method of improving the elevated temperature storage stability of a fabric conditioning composition comprising adding to the fabric conditioning composition a nonionic material of formula (I). . . wherein . . . n is 2 or 3."

Thus, the claimed composition and method require that the nonionic material contains either 2 or 3 equivalents of ethoxylation.

The claimed fabric conditioning composition and method containing a nonionic material that has 2 or 3 equivalents of ethoxylation would not have been obvious in view of the disclosure of Demeyere. In contrast to Demeyere, the present invention relates to stabilizing fabric conditioning compositions stored at *high* temperatures. As such, a person of ordinary skill in the art wanting to make the claimed fabric conditioning compositions would not have relied upon the teachings of Demeyere, which is directed to a different problem to be solved, *i.e.*, stabilizing fabric conditioning compositions stored at *low* temperatures. Even assuming, *arguendo*, that a person of ordinary skill in the art considering the problem of stability of fabric conditioning compositions at *high* temperatures would have looked to the teachings of Demeyere, that person would have had no reason to pick the specifically claimed nonionic surfactant material containing 2 or 3 equivalents of ethoxylation because that nonionic surfactant material is not disclosed in Demeyere nor does Demeyere provide any reason to use a nonionic surfactant material containing 2 or 3 equivalents of ethoxylation. Instead, Demeyere discloses only a nonionic surfactant material that has 5-20 equivalents of ethoxylation. *See* Demeyere *et al.* Examples 1 and 2 on page 15. As such, the claimed range of 2 or 3 equivalents of ethoxylation is not disclosed in Demeyere. Additionally, Demeyere provides no reason to select the claimed ranged of 2 or 3 equivalents of ethoxylation.

Moreover, the ranges are *not* close enough that one skilled in the art could have expected them to have the same properties. A nonionic material containing 2 or 3 equivalents of ethoxylation is *not* the same as the nonionic material containing 5 equivalents of

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ethoxylation disclosed in Demeyere. Even assuming, *arguendo*, as the Examiner contends, that a nonionic material containing 4 equivalents of ethoxylation and a nonionic material containing 5 equivalents of ethoxylation would be similar enough that the person of ordinary skill would expect similar properties, a nonionic material containing 2 or 3 equivalents of ethoxylation is *not* the same as a nonionic material containing 5 equivalents of ethoxylation. Thus, Applicants submit that no *prima facie* case of obviousness exists.

Even if the Examiner has presented a *prima facie* case of obviousness, which Applicants submit he has not, the representative examples of the claimed compositions show superior properties of the claimed composition. For example, Table 5 of the specification shows storage stability results of fabric softening compositions at 45° C over a duration of twelve weeks. See specification at page 22. By six weeks, Example C (containing 5 equivalents of ethoxylation) is not stable and pearlesces. See specification at pages 19-20, Table 1; and at page 22, Table 5. In comparison, the claimed fabric softening compositions containing 2 or 3 equivalents of ethoxylation (Examples B and H-M) are stable, maintain viscosity and do not undergo *any* phase changes (*e.g.*, gelling, pearlescence, phase separation, flocculation or solidification). *Id.* at pages 19-22, Tables 1-3 and 5. Even when the temperature is increased to 50° C, the claimed fabric softening compositions containing 2 or 3 equivalents of ethoxylation perform better and are more stable than a fabric softening composition containing 5 equivalents of ethoxylation. *Id.* at page 23, Table 6. Thus, the claimed fabric softening compositions containing 2 or 3 equivalents of ethoxylation are more stable and maintain their viscosity at high temperature when compared to a fabric softening composition similar to the composition disclosed in Demeyere containing five equivalents of ethoxylation.

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In sum, there is nothing in the cited art, the knowledge in the art and the nature of the problem to be solved, that would have provided a person of ordinary skill in the art a reason to arrive at the claimed fabric conditioning composition and method containing a nonionic surfactant material that has 2 or 3 equivalents of ethoxylation.

In view of the above, Applicants respectfully request that the rejection of claims 1 and 4-7 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

### ***Conclusion***

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Deborah A. Sterling  
Attorney for Applicants  
Registration No. 62,732

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1100 New York Avenue, N.W.  
Washington, D.C. 20005-3934  
(202) 371-2600

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